



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2022-05 (June 16, 2022)

Extrajudicial Activities; Writing; Public Statements; Political Activity; Off the Bench Conduct; Rules 1.2, 1.3, 2.10, 2.11, 3.1, Comment (1) to Rule 3.1, & 4.1

Issue: May a Judicial Official write a foreword or dedication in the next State Register and Manual¹ (also known as the “Blue Book”) honoring current Secretary of the State Denise Merrill?

Facts: The Judicial Official and Secretary Merrill are personal friends and have worked together in the past. The Judicial Official indicated that Secretary Merrill is not running for reelection and is currently not a candidate for any elective office. The Judicial Official asks whether it is appropriate for such a writing to be published over the Judicial Official’s name, either with or without the use of his/her judicial title. The Judicial Official stated that he/she will be retaining editorial control over the foreword/dedication. The publication date is expected for this fall when Secretary Merrill will still be in office. Her term expires next January.

While the dedication will be primarily factual and historical in nature, the Judicial Official plans to write about Secretary Merrill’s career and will necessarily mention party and accomplishments. Some of those accomplishments, would include Election Day registration and no excuse absentee ballots.

In the Judicial Official’s current assignment, he/she does not handle any cases involving the Office of the Secretary of the State. In fact, the Judicial Official has a blanket recusal in effect for any case involving the Secretary of the State that he/she plans to re-evaluate after Secretary Merrill leaves office in January.

Relevant Code Provisions: Rules 1.2, 1.3, 2.10, 2.11, 3.1, Comment (1) to Rule 3.1 & 4.1

Rule 1.2 of the Code of Judicial Conduct (Promoting Confidence in the Judiciary) states that a judge “should act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct

¹ The State of Connecticut Register & Manual is prepared pursuant to Sec. 3-90 of the General Statutes. Subsection (a) of Gen. Stat. Section 3-90 states that “The Secretary [of the State] shall, annually, prepare and publish a Register and Manual that shall give a complete list of the state, county and town officers, of the judges of all courts and of the officials attending thereon. The population, railroad and postal facilities and other items of general interest concerning each town shall also be given in such book and such other information in relation to state departments, state institutions and other matters of public concern as the Secretary deems desirable.”

that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office) states that "[a] judge shall not use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so."

Rule 2.10 (Judicial Statements on Pending and Impending Cases) prohibits judges from making any public statement that "might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing."

Rule 2.11(a) (Disqualification) requires disqualification of a judge in "any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances... (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer,...(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy."

Rule 3.1 (Extrajudicial Activities in General) provides that "[a] judge may engage in extrajudicial activities except as prohibited by law" and that "[a] judge shall not: ... (3) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

Comment (1) to Rule 3.1 states that "[j]udges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects."

Rule 4.1 (c) states that "[a] judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice."

Discussion: This Committee has previously considered the propriety of engaging in extrajudicial writing activities. The following are a few examples:

- In [JE 2010-15](#), the Committee concluded that a Judicial Official may author a foreword to a book written by a police officer about child safety and the Internet, with conditions.
- In [JE 2010-35](#), the Committee concluded that a Judicial Official may not write a testimonial/endorsement for a Connecticut legal practice guide that is being published by a non-profit bar-related legal organization because it would violate Rule 1.3.
- In [2011-25](#), the Committee concluded that a Judicial Official could provide biographical and historical information regarding his/her tenure with a state agency for publication on the agency's website for educational purposes, subject to four conditions.
- In [JE 2012-32](#), the Committee concluded that a Judicial Official should not submit the proposed op-ed article concerning the importance of voting in the upcoming elections because it contained statements that (1) discuss specific election races and candidates, (2) suggest the Judicial Official's political priorities and views, and (3) draw attention to

certain political issues/controversies important to the Judicial Official (such as taxes, homeland security, environmental quality standards, FDA standards, Voter ID laws and the Affordable Healthcare Act) which would be in violation of Rule 3.1(3) and Canon 4's proscriptions against engaging in extrajudicial, political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

- Last month, in [JE 2022-04](#), the Committee concluded that a Judicial Official may write an occasional column for an online newspaper to educate the public on the ways the legal system works, how judges make decisions, and the law generally, subject to six conditions.

The Committee agreed that it is generally permissible for a Judicial Official to write a factual and historical foreword describing a government official's tenure in a non-partisan official state publication without violating the Code, subject to the conditions noted below.

- 1) The Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality. Rule 3.1(3).
- 2) The Judicial Official's written statements are factual and instructive about the subject matter but do not include comments about any pending or impending matters. Rule 2.10.
- 3) The Judicial Official is careful not to express opinions in a way that would indicate that the Judicial Official has a predisposition with respect to particular cases or a personal bias or prejudice concerning a party or a party's lawyer. Rule 2.11(a).
- 4) The Judicial Official does not comment on political issues in the foreword or otherwise engage in prohibited political activity under Rule 4.1.
- 5) The Judicial Official does not publish the foreword in a partisan publication.
- 6) The Judicial Official maintains editorial control over the content of his/her writing and retains the right to review and pre-approve any information that may be published in the publication.

However, the Committee's ethical concern in this case stems from the proposed content of the foreword/dedication. The Judicial Official has indicated that the foreword will necessarily mention party and accomplishments, such as Election Day registration and no excuse absentee ballots. Some of those accomplishments, in today's climate, could be interpreted by the reader as political in nature. So, while on the one hand, to say that Secretary Merrill worked on and accomplished these voter-related issues is purely factual, in today's climate they have become largely partisan issues. The piece could also be viewed by the public as a testimonial praising the secretary's accomplishments, which could suggest the judge's political priorities and views. It could also appear as though the Judicial Official has a personal bias in favor of the Office of the Secretary of the State. If the foreword is drafted as a laudatory piece, it could potentially be used as a political endorsement should Secretary Merrill ever want to run for public office in the future.

Recommendation: Based on the facts presented, the Committee unanimously concluded that the Judicial Official should not write the foreword/dedication to Secretary Merrill in the State Register and Manual because it will likely contain statements that (1) will mention accomplishments and issues, such as Election Day registration and no excuse absentee ballots, that have become largely partisan, (2) may appear as though the Judicial Official has a personal

bias in favor of the Office of the Secretary of the State, and (3) may suggest the Judicial Official's political priorities and views, in violation of Rules 2.11(a), 3.1(3) and 4.1.

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